

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Edward Earl Willis, #48553,

Civil Action No. 3:19-cv-309-CMC

Plaintiff,

vs.

ORDER

Christopher A. Morrow, Assistant Attorney
General for the State of South Carolina,

Defendant.

This matter is before the court on Plaintiff's Amended Complaint pursuant to 42 U.S.C. § 1983. ECF No. 11. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), D.S.C., the matter was referred to United States Magistrate Judge Shiva V. Hodges for pre-trial proceedings. On February 25, 2019, the Magistrate Judge issued a Report recommending this matter be summarily dismissed with prejudice and without issuance and service of process based on prosecutorial immunity. ECF No. 15. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections on March 14, 2019. ECF No. 17.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection.

See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After considering the record, the applicable law, the Report and Recommendation of the Magistrate Judge and Plaintiff’s objections, the court agrees with the Report’s recommendation the case be dismissed. The sole Defendant in this case is a state Assistant Attorney General who is entitled to absolute prosecutorial immunity for actions carried out in prosecuting a case. *See Nero v. Mosby*, 890 F.3d 106, 117-18 (4th Cir. 2018) (holding absolute prosecutorial immunity applies to actions “intimately associated with the judicial phase of the criminal process.”). Plaintiff alleges Defendant knew the State’s petition for civil confinement of Plaintiff as a Sexually Violent Person contained erroneous information. ECF Nos. 11, 17. As noted by the Magistrate Judge, the Attorney General and his Assistants function as prosecutors in proceedings under the Sexually Violent Predator Act (“SCPA”) and as such, their actions associated with Plaintiff’s detention pursuant to the SVPA are entitled to absolute immunity. *See Michau v. Warden*, C/A No. 2:11-286, 2011 WL 4943631, at *4 (D.S.C. Oct. 17, 2011); *Hendricks v. Bogle*, No. 3:13-cv-2733, 2013 WL 6183982, at *2 (D.S.C. Nov. 25, 2013). Although Plaintiff contends his claim is not barred by prosecutorial immunity “because the State’s second petition is barred by *res judicata*,” *res judicata* or the merits of the underlying action have no relationship to prosecutorial immunity.

Further, it does not appear Plaintiff would be able to further amend his Amended Complaint to allege any facts that would allow him to sue this Defendant, who is immune for his actions in a

prosecutorial function. Plaintiff has been given the opportunity to amend his Complaint, and his Amended Complaint still fails to state a viable claim. Accordingly, the court adopts the Report by reference in this Order. This matter is hereby dismissed with prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
March 21, 2019